

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**MYLAN DEFENDANTS' COMPANION MOTION FOR SUMMARY JUDGMENT
AND TO EXCLUDE EXPERT TESTIMONY**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants Mylan Inc., Mylan Pharmaceuticals Inc., Mylan Bertek Pharmaceuticals Inc., and UDL Laboratories, Inc. (collectively, "Mylan Defendants") move for summary judgment on all remaining claims and causes of action pending against them in this MDL proceeding. This motion serves as a companion to Defendants' Motion for Summary Judgment, filed today on behalf of all defendants. Mylan Defendants incorporate by reference Defendants' Motion for Summary Judgment and its supporting memorandum, including all exhibits, factual statements, and authorities cited therein.

After three years of litigation, Plaintiffs have no admissible evidence that Digitek® tablets distributed by Mylan Defendants and allegedly consumed by Plaintiffs were defective. Because proof of defect is an essential element common to all Plaintiffs' claims and causes of action, Mylan Defendants are entitled to judgment as a matter of law in the remaining MDL cases.

Additionally, Mylan Defendants move, pursuant to Rule 702 of the Federal Rules of Evidence, for an order excluding the expert testimony of Mark Kenny, on the grounds that Mr.

Kenny, the only expert designated to offer opinion testimony against Mylan Defendants, lacks sufficient qualifications for his opinions, and they have no reliable basis in fact or methodology.

FOR THESE REASONS, Mylan Defendants respectfully ask this Court to enter an order granting summary judgment for Mylan Defendants on all remaining claims and causes of action asserted against them by Plaintiffs in this MDL proceeding. Mylan Defendants also ask this Court to enter an order excluding the proffered expert testimony of Mark Kenny, the only Plaintiffs' expert to offer opinions concerning Mylan Defendants.

Respectfully submitted,

ALLEN GUTHRIE & THOMAS, PLLC

SHOOK, HARDY & BACON LLP

Rebecca A. Betts, LIAISON COUNSEL
500 Lee Street East, Suite 800
Charleston, West Virginia 25301
Tel: (304) 345-7250
Fax: (304) 345-9941
E-mail: rabetts@agmtlaw.com

By: s/Harvey L. Kaplan
Harvey L. Kaplan, CO-LEAD COUNSEL
Madeleine M. McDonough, CO-LEAD
COUNSEL
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
Tel: (816) 559-2214
Fax: (816) 421-5547
E-mail: hkaplan@shb.com
E-mail: mmcdonough@shb.com

Attorney for Defendants

*Attorneys for Defendants Mylan Inc., Mylan
Pharmaceuticals Inc., Mylan Bertek
Pharmaceuticals Inc. and UDL Laboratories,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2011, a copy of the foregoing MYLAN DEFENDANTS' COMPANION MOTION FOR SUMMARY JUDGMENT AND TO EXCLUDE EXPERT TESTIMONY was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

ALLEN GUTHRIE & THOMAS, PLLC

SHOOK, HARDY & BACON LLP

Rebecca A. Betts, LIAISON COUNSEL
500 Lee Street East, Suite 800
Charleston, West Virginia 25301
Tel: (304) 345-7250
Fax: (304) 345-9941
E-mail: rabetts@agmtlaw.com

By: s/Harvey L. Kaplan
Harvey L. Kaplan, CO-LEAD COUNSEL
Madeleine M. McDonough, CO-LEAD
COUNSEL
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
Tel: (816) 559-2214
Fax: (816) 421-5547
E-mail: hkaplan@shb.com
E-mail: mmcdonough@shb.com

Attorney for Defendants

*Attorneys for Defendants Mylan Inc., Mylan
Pharmaceuticals Inc., Mylan Bertek
Pharmaceuticals Inc. and UDL Laboratories,
Inc.*